

ST 96-44

Tax Type: SALES TAX

Issue: Temporary Storage (Exemption)  
Prepaid Sales Tax Not Remitted

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE HEARINGS DIVISION  
CHICAGO, ILLINOIS

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TAXPAYER	)
	) No.
	)
v.	) IBT No.
	)
THE DEPARTMENT OF REVENUE	)
OF THE STATE OF ILLINOIS	) Linda K. Cliffler,
	) Admin. Law Judge
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RECOMMENDATION FOR DISPOSITION

APPEARANCES: C. Michael Witters for TAXPAYER

SYNOPSIS: TAXPAYER (hereinafter "TAXPAYER" or "Taxpayer") owns and operates trucks engaged in interstate commerce. Pursuant to an audit, the Department of Revenue determined that the taxpayer did not pay use tax on certain purchases for the period April 1, 1986 to December 31, 1990 and issued a Notice of Tax Liability ("NTL") No. XXXXXX on March 25, 1992. Taxpayer paid the tax and made a claim for credit of overpaid taxes, penalties and interest on May 5, 1993. In support of its claim, taxpayer asserts that the purchases of materials included in the NTL were one of two types. First, either the items were not shipped from or delivered to Illinois or the items were stored in Illinois temporarily for shipment outside the state. Second, in the case of the computer equipment, sales taxes were paid on the same equipment by the vendor.

In consideration of these matters, I find that taxpayer's claim for credit should be denied.

FINDINGS OF FACT:

1. TAXPAYER is an Illinois corporation engaged in interstate commerce with its home office located at Sumner, Illinois. (Taxpayer Ex. No. 4, Protest)
2. TAXPAYER owned and operated 260 trucks during the audit period which were used primarily in hauling United States mail. (Tr. pp. 13, 26)
3. TAXPAYER owned and operated a warehouse facility in Effingham, Illinois. The warehouse facility was located on the interstate highway so that products could be placed on trucks and put directly into interstate commerce. (Tr. pp. 23-24)
4. TAXPAYER's trucks operated approximately 13% of the time within Illinois, although that was primarily mileage across the state. (Tr. p. 14)
5. TAXPAYER purchased custom log books from XXXXX. The log books were customized for use in individual states, some were to be used in Illinois and the rest were to be used in other states. (Tr. p. 11) XXXXX is located in Wisconsin. (Tr. p. 13) The billing address and shipping address on Invoices No. 763476, 885475, and 1011173 for the log books were the same: a Post Office Box in Sumner, Illinois. (Taxpayer Ex. Nos. 8, 9, and 10)
6. TAXPAYER purchased supplies such as light bulbs, filters and power service (which is a fuel additive to prevent freezing) from ENTERPRISE. (Tr. pp. 14-15) ENTERPRISE is located in Indiana. (Tr. p. 15) PRESIDENT, president of TAXPAYER, testified that these items were purchased in Indiana for use in Indiana. (Tr. p. 15) The billing address and shipping address on Invoices No. 214501, 251613 and 186664 were the same: a Post Office Box in Sumner, Illinois. (Taxpayer Ex. Nos. 8, 9, and 10) The shipping address on invoice 11647 was to Effingham, Illinois. (Taxpayer Nos. 11, 12, 13 and 14)
7. TAXPAYER purchased power service from POWER SERVICE (Tr. p. 16) POWER SERVICE was located in Indiana. (Taxpayer Ex. No. 13) PRESIDENT testified that the power service was put in trucks in Indiana that went to the east coast, that those trucks would never enter Illinois. (Tr. p. 17) Invoices Nos. 1214 and 1885 merely stated that the name of the purchaser was "TAXPAYER," no location was given for shipping. (Taxpayer Ex. No. 15)

8. TAXPAYER also purchased power service from DISTRIBUTOR (Tr. p. 19) DISTRIBUTOR was located in Colorado. (Tr. p. 19, Taxpayer Ex. No. 16) The shipping address on Invoice No. 42718 was Commerce City, Colorado. (Taxpayer Ex. No. 16)

9. XXXXX invoiced TAXPAYER for 288 pallets. According to testimony, the pallets had been picked up by TAXPAYER as part of a shipment of dog food, and not returned to XXXXX. The consignee of the dog food kept the pallets with the delivery. (Taxpayer Ex. No. 17, Tr. p. 21)

10. TAXPAYER purchased three power washers from EQUIPMENT. According to PRESIDENT's testimony one was used in Illinois, one in North Carolina and one in Colorado. Taxpayer paid the tax on the power washer that was used in Illinois. (Tr. p. 23) The invoice number from EQUIPMENT, Taxpayer Ex. No. 18, showed no shipping address. Taxpayer Ex. No. 19, another invoice from EQUIPMENT, shows a shipping address of the EQUIPMENT Garage.

11. TAXPAYER also purchased power service from OIL. (Tr. p. 25) Invoice No. 79779 bears the notation "Hold on Dock, Vincennes, Ind." at the shipping address area. (Taxpayer Ex. No. 20) PRESIDENT testified that the power service was used exclusively in Indiana. (Tr. p. 25)

12. TAXPAYER purchased a wheel dolly from INDUSTRIES. INDUSTRIES is located in California. (Taxpayer Ex. No. 21) PRESIDENT testified that wheel dollies are only used on the New York Thruway. (Tr. pp. 26-27) No address was shown on Invoice No. WD-1025 as a shipping address. (Taxpayer Ex. No. 21)

13. TAXPAYER purchased kits and fire extinguishers for the trucks from AUTO SUPPLY. (Taxpayer Ex. No. 22, Tr. pp. 28-29) AUTO SUPPLY is located in Indiana. (Taxpayer Ex. No. 22)

14. TAXPAYER purchased computer equipment and software from ASSOCIATES. (Taxpayer Ex. Nos. 23, 24, 25, 26, 28 and 29, Tr. pp. 23-29)

15. Taxpayer submitted an affidavit from XXXXX of ASSOCIATES attesting to the fact that ASSOCIATES had paid Retailers' Occupation Tax to the state as a result

of an audit on the same equipment which was sold to TAXPAYER. (Taxpayer Ex. No. 5)

**CONCLUSIONS OF LAW:**

The Department of Revenue audited the taxpayer in the instant case, TAXPAYER, for the period April 1, 1986 through December 31, 1990 and issued a Notice of Tax Liability, No. XXXXX in the amount of \$11,037.00 on March 25, 1992. On April 13, 1993, TAXPAYER paid the deficiency pursuant to the NTL together with accrued interest of \$965.85.

According to 35 ILCS 105/21, regarding claims for credit or refund of the Use Tax,

...No claim shall be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit or refund to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment or order of court. (emphasis added)

Thus, the taxpayer may not make a claim for refund of Use Tax where a NTL has been issued. The taxpayer should have protested the NTL instead of paying the tax and filing a claim for refund. I have no authority under 35 ILCS 105/21 to consider taxpayer's claim.

WHEREFORE, for the reasons stated above, it is my recommendation that the Claim for Credit be denied.

Date:

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Linda K. Cliffel  
Administrative Law Judge